

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

ANNIE LOIS FABRIS,

Civil Action File No.

Plaintiff,

v.

WALMART, INC.,

Defendant.

NOTICE OF REMOVAL

COMES NOW WALMART INC., named Defendant in the above-captioned matter, by and through its counsel of record, within the time prescribed by law, and files this Notice of Removal, showing the Court as follows:

1.

The above-named Plaintiff filed suit against Defendant WALMART INC. in the State Court of Jackson County, Georgia, which is within the Gainesville Division of this Court. 28 U.S.C.A. § 90(a)(1). Said lawsuit is styled as above and is numbered as Civil Action File No. 21SV495. Plaintiff's claims against Defendant includes claims of negligence.

2.

Plaintiff filed the Complaint on or about November 3, 2021. Defendant

WALMART INC. service of summons and a copy of the Complaint on November 19, 2021. Defendant WALMART INC. files this notice of Removal within thirty (30) days after service of summons and a copy of this Complaint.

3.

Defendant WALMART INC. is a Delaware corporation with its principal place of business in the State of Arkansas. Defendant WALMART INC. was not a citizen of the State of Georgia at the time of or immediately prior to the filing and service of said lawsuit, or at any time thereafter. The principal place of business for WALMART INC. is 708 SW 8th Street, Bentonville, AR 72716.

4.

Annie Lois Fabris is a citizen of the State of Georgia.

5.

Complete diversity of citizenship exists between Plaintiff and Defendant.

6.

Plaintiff claims injuries to her neck, left shoulder, head, hip, legs and pelvis, including a concussion, tension headache, whiplash, and aggravation of existing endstage osteoarthritis post a massive rotator cuff tear, pain and suffering, past medical expenses in excess of \$24,700.54, future medical expenses, and has made a \$250,000 settlement demand (Exhibit "A"), thereby meeting the jurisdictional

requirement for federal subject matter jurisdiction. See Lowery v. Alabama Power Co., 483 F.3d 1184, 1262 n.62 (11th Cir. 2007) (quoting 28 U.S.C. § 1446(b)); Addo v. Globe Life & Accident Ins. Co., 230 F.3d 759, 761–62 (5th Cir.2000); Williams v. Safeco Ins. Co., 74 F.Supp.2d 925, 929 (W.D.Mo.1999); Southern Ins. Co. of Virginia v. Karrer, Civil Action No. 3:10–CV–84 (CAR), 2011 Westlaw 1100030 (M.D.Ga. Mar. 22, 2011); Golden Apple Management Co. v. Geac Computers, Inc., 990 F.Supp. 1364, 1368 (M.D.Ala. 1998); Jackson v. Select Portfolio Servicing, 651 F.Supp.2d 1279, 1281 (S.D.Ala. 2009); Barlow v. Variety Wholesalers, Civil Action No. 5:14-CV-375 (WLS) (M.D.Ga. Dec. 17, 2014); Devezin v. Wal-Mart Stores East, LP, Civil Action No. 1:134-CV-3721 (CAP) (N.D.Ga February 20, 2015); Peterman v. Wal-Mart Stores, Civil Action No. 1:13-cv-91 (WLS), 2013 Westlaw 5210188 (M.D.Ga. Sept. 13, 2013); Farley v. Variety Wholesalers, Civil Action No. 5:13-CV-52 (CAR), 2013 Westlaw 1748608 (M.D.Ga. April 23, 2013); Streicher v. Sam’s East, Inc., Civil Action File No. CV419-01(WTM) (S.D. Ga March 4, 2019).

“Complaints alleging serious, lasting physical injuries are typically removable because it is facially apparent that these claims are worth more than \$75,000.” Hickerson v. Enterprise Leasing Company of Georgia, LLC, 818 Fed.Appx. 880, 883 (11th Cir. 2020) (emphasis added) (citing Gebbia v. Wal-Mart

Stores, Inc., 233 F.3d 880, 883 (5th Cir. 2000)(concluding that plaintiff's unspecified damages, including permanent disfigurement as well as pain and suffering, satisfied the "facially apparent" inquiry); Luckett v. Delta Airlines, Inc., 171 F.3d 295, 298 (5th Cir. 1999) (holding that plaintiff's alleged damages for property damage, travel expenses, an emergency ambulance trip, a stay in the hospital, and pain and suffering met the jurisdictional amount)). See also Hoskins v. Wal-Mart Stores East, L.P., Case No. 1:21-CV-00249-ELR (N.D. Ga. June 17, 2021) (attached as Appendix "A"); Roe v. Michelin North America, Inc., 613 F.3d 1058 (11th Cir. 2010). Here, Plaintiff alleges serious, lasting physical injuries. Indeed, in Plaintiff's complaint, **Plaintiff claims "severe and permanent pain and suffering."** (Complaint ¶ 16).

The amount in controversy, exclusive of interest and costs, exceeds \$75,000.

7.

This action is removable pursuant to 28 U.S.C. §§ 1332, 1441, based on complete diversity of citizenship between Plaintiff and Defendant.

8.

\Pursuant to the provisions of 28 U.S.C. § 1446, Defendant has attached as Exhibit "B" copies of all the pleadings that were provided to and served upon Defendant, including copies of all pleadings that have been filed to date in the State Court of Jackson County, Georgia for the above-styled case.

9.

Pursuant to 28 U.S.C. § 1446, Defendant is not required to file a removal bond.

10.

Written notice of the filing of this Notice of Removal will be given to all parties as required by 28 U.S.C. § 1446.

11.

A true and correct copy of this Notice of Removal will be filed with the Clerk of the State Court of Jackson County, Georgia, as required by 28 U.S.C. § 1446.

WHEREFORE, Defendant WALMART INC. prays that the above-captioned lawsuit be removed to the United States District Court for the Northern District of Georgia, Gainesville Division.

McLAIN & MERRITT, P.C.

/s/ Nicholas E. Deeb
Nicholas E. Deeb
Georgia Bar No. 117025
Attorney for Defendant
WALMART INC.

3445 Peachtree Road, N.E.
Suite 500
Atlanta GA 30326
(404) 266-9171
(404) 365-4535
(404) 364-3138 (fax)
ndeeb@mmatllaw.com

The undersigned counsel certifies that the foregoing Notice of Removal has been prepared with one of the font and point selections approved by the court in LR 5.1B.

/s/ Nicholas E. Deeb
Nicholas E. Deeb

CERTIFICATE OF SERVICE

This is to certify that on November 30, 2021, I electronically filed a **NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to attorneys of record.

McLAIN & MERRITT, P.C.

/s/ Nicholas E. Deeb
Nicholas E. Deeb
Georgia Bar No. 117025
Attorneys for Defendant
WALMART INC.

3445 Peachtree Road, N.E.
Suite 500
Atlanta GA 30326
(404) 365-4535
(404) 364-3138 (fax)
ndeeb@mmatllaw.com